

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTH REGION**

**DEVELOPMENT CENTERS, INC.**

**Employer**

**and**

**Case 7-RD-3660**

**KATHLEEN WYSZACKI, An Individual,**

**Petitioner**

**and**

**LOCAL 1640, MICHIGAN COUNCIL 25,  
AMERICAN FEDERAL OF STATE, COUNTY,  
AND MUNICIPAL EMPLOYEES (AFSCME), AFL-CIO**

**Union**

**APPEARANCES:**

Henry J. Andries, Jr., Attorney, of Bingham Farms, Michigan, for the Employer

Kathleen Wyszacki, Petitioner, pro se

Richard G. Mack, Jr., Attorney, of Detroit, Michigan, for the Union

**DECISION AND ORDER**

Upon a petition filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding<sup>1</sup>, the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are affirmed.

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<sup>1</sup> All of the parties filed briefs, which were duly considered.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction.

3. The labor organization involved claims to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

## **Overview**

The Employer is a community mental health facility that provides mental health services out of its facilities located in Detroit, Michigan. The Petitioner seeks a decertification election in a bargaining unit of all full-time and regular part-time employees, including all clinical social workers, staff psychologists, infant mental health specialists, registered nurses, masters and bachelor level caseworkers and occupational therapists (professional employees) and AA level caseworkers, child care workers, advocates, secretaries, janitors and van drivers employed by the Employer at its facilities located at 24424 W. McNichols Road, 17321 Telegraph Road, and 17421 Telegraph Road, Detroit, Michigan; but excluding all administrators, confidential employees, guards and supervisors as defined in the Act. The Union and the Employer had a collective bargaining agreement covering employees in the above-described bargaining unit which expired on September 30, 2008.

The Union asserts that it reached a tentative successor agreement with the Employer on December 8, 2009, its members ratified the agreement on December 22, 2009, and it gave notice to the Employer of the ratification on January 15, 2010. The Union asserts that because the Petitioner filed the instant petition on January 22, 2010, the agreement sufficiently serves to bar an election pursuant to the Board's contract-bar doctrine<sup>2</sup>. Accordingly, the Union seeks to have the petition dismissed.

The Employer asserts that it is unclear whether all outstanding issues were resolved by the December 8, 2009 agreement. It further asserts that the effective date of the December 8, 2009 agreement is not clear. The Petitioner joins with the Employer in asserting that the December 8, 2009 agreement is not sufficient to serve as a contract bar and that an election should be held. They also contend that ratification did not occur on December 22, 2009.

I find that the agreement reached by the Union and Employer on December 8, 2009 does serve as a bar to an election. It was in writing, signed by both parties, contains

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<sup>2</sup> *Hexton Furniture Co.*, 111 NLRB 342 (1955).

substantial terms and conditions of employment sufficient to stabilize the bargaining relationship between the parties, and establishes as a condition precedent that it becomes effective upon ratification by both the Union and the Employer. The Union and the Employer each ratified the agreement prior to the filing of the instant petition.

### **History of Collective Bargaining**

The Union has represented the Employer's employees for about twenty years. In 2005, the Union and the Employer negotiated a collective bargaining agreement that was effective from October 1, 2005, through September 30, 2008. The parties began negotiating for a successor agreement in July or August 2008. On December 18, 2008, Dr. Robert Shaw, the Employer's executive director, sent a letter to Sarah George, the Union's staff representative, notifying her of the Employer's cancellation of the collective bargaining agreement, effective February 1, 2009. The parties continued to bargain over terms and conditions of employment until the culmination of such bargaining on December 8, 2009 when the parties memorialized such terms and conditions.

On December 8, 2009, Shaw, Rachelle Bowen, a member of the Employer's bargaining team, Henry Andries, the Employer's chief negotiator, George and Pertina Tucker, co-chairperson of the Union's bargaining team, signed a document entitled "Management Settlement Agreement." The document provides that the terms therein represent "the full and complete Settlement of Contract Negotiations by and between Development Centers, Inc. (Management) and AFSCME Local 1640, Counsel 25 (Union) relative to the ongoing contract negotiations between the parties for a successor Collective Bargaining Agreement." According to the document, the collective bargaining agreement is effective for a period of three years beginning on the date of ratification by both parties.

On December 17, 2009, Dr. Shaw notified George in writing that the Employer's Board of Directors ratified the agreement on December 16. On January 15, 2010, local union president Arlean King notified Shaw in writing that the Union ratified the agreement on December 22, 2009 and asked that the Employer resume deducting dues from employee paychecks. On that same day, Shaw sent an email to unit employees advising them that both parties ratified the tentative contract and that the agreement would not be effective until the changes were integrated into the text of the contract and both parties executed the agreement. On January 19, 2010, he sent another email to employees advising them that he may have been incorrect with regard to the effective date of the contract, and had referred the matter to the Employer's attorney. Finally, on January 20, 2010, Shaw sent an email to unit employees advising them that it was his understanding that the collective bargaining agreement was in effect from the date of ratification of the December 8, 2009 agreement, and that the Employer would proceed with dues deductions when it received signed dues authorization cards from employees.

The instant petition was filed on January 22, 2010.

## **Analysis**

The only issue presented in this matter is whether the tentative agreement between the Union and Employer is sufficient to constitute a bar to the election under the Board's contract bar doctrine. If a contract does exist and conforms to the required elements of the contract bar doctrine, then it serves as a bar to an election. *UMass Memorial Medical Center*, 349 NLRB 369 (2007); *Hexton Furniture Co.*, 111 NLRB 342, 344 (1955). In order to serve as a bar, an agreement must be written, signed before the rival petition is filed, contain terms and conditions of employment "sufficient to stabilize the parties' bargaining relationship," encompass the employees involved in the petition, and cover an appropriate unit. *Coca Cola Enterprises, Inc.*, 352 NLRB 1044 (2008); *Appalachian Shale Products Co.*, 121 NLRB 1160, 1162-63 (1958).

The contract bar doctrine is intended to balance the statutory policies of stabilizing labor relations and facilitating employees' exercise of free choice in the selection or change of a bargaining representative. *Direct Press Modern Litho, Inc.*, 328 NLRB 860, 861 (1999), citing *Appalachian Shale Products Co.*, supra. The doctrine is Board created, not imposed by the Act or judicial case law, and the Board has considerable discretion to formulate and apply its rules. *Bob's Big Boy Family Restaurants v. NLRB*, 625 F.2d 850, 851, 853-854 (9<sup>th</sup> Cir. 1980). The burden of proving contract bar rests with the party asserting it. *Coca Cola Enterprises*, supra at 1045; *Roosevelt Memorial Park, Inc.*, 187 NLRB 517, 517-518 (1970).

### ***The December 8, 2009 agreement***

The requisite elements of a contract appear to have been met by the December 8, 2009, agreement. It is a written document signed by both the Union and the Employer. It covers employees in an appropriate unit, and the employees in that unit are the same as those involved in the instant petition. On its face, the agreement provides that it represents the full and complete settlement of contract negotiations between the Union and Employer, incorporates all previous tentative agreements, and states that if a term was not addressed by the December 8, 2009 agreement or a previous tentative agreement, it shall remain as written in the expired collective bargaining agreement. Therefore, the agreement contains, through incorporation of other agreements and the expired contract, terms and conditions of employment sufficient to stabilize the collective bargaining relationship between the Union and Employer.

At the hearing, the Employer contended that certain issues were not resolved by the December 8, 2009 agreement, and attempted to introduce evidence concerning those issues. That evidence was properly excluded. The parol evidence rule prohibits the use of extrinsic evidence to vary the unambiguous terms of a written agreement. *NDK Corp.*,

278 NLRB 1035, 1035 (1986). The Board has consistently limited its inquiry into whether a contract may serve as a bar to the four corners of the agreement, and has prohibited the introduction of extrinsic evidence. *In re Waste Management of Maryland*, 338 NLRB 1002, 1003; *United Health Care Services*, 326 NLRB 1379, 1379 (1998); *Jet-Pak Corp.*, 231 NLRB 552, 552-553 (1977). No evidence was presented that the December 8, 2009 agreement is ambiguous on its face, and therefore it is not necessary to examine extrinsic evidence as to its meaning.

While the final collective bargaining agreement was not formally typed or signed at the time the instant petition was filed, there is no requirement that an agreement be embodied in a formal document to serve as a contract bar. *Appalachian Shale Products Co.*, supra at 1162. An informal document which contains substantial terms and conditions of employment is sufficient if it meets the other contract bar requirements. *USM Corp.*, 256 NLRB 996, 999 (1981). A signed tentative agreement may suffice to constitute a contract bar if it addresses substantive terms and conditions of employment. *St. Mary's Hospital*, 317 NLRB 89, 90 (1995).

#### ***Ratification of the December 8, 2009 Tentative Agreement***

The only remaining issue is whether the agreement was effective at the time the Petitioner filed the instant petition. When an agreement contains an express provision requiring ratification as a condition precedent for the agreement to take effect, the agreement will not serve as a bar until it is ratified. *Appalachian Shale Products*, supra at 1163 (1958). If the agreement contains no express language requiring ratification by a particular method, the condition precedent of ratification means ratification as defined by the Union in its internal procedures. *Childers Products Co.*, 276 NLRB 709, 711 (1985), enfd. 791 F.2d 915 (3d Cir. 1986).

The December 8, 2009 agreement includes a clause stating that the term of the agreement will be for a period of three years beginning with the date of ratification by both parties. Accordingly, it was not effective until ratified by both the Employer and Union. The Employer ratified the agreement on December 16, 2009, and the Union did so on December 22, 2009. The instant petition was not filed until January 22, 2010, well after the agreement took effect.

The Employer and Petitioner contend that the ratification process was not conducted fairly, and that the contract was not ratified on December 22, 2009. It is well-established Board precedent that an employer may not call into question the internal procedures a union follows to achieve ratification of an agreement. *Martin J. Berry Co.*, 241 NLRB 1011, 1013; *North Country Motors*, 146 NLRB 671, 673 (1964); *Childers Products Co.*, supra. An employer is entitled to rely upon a representation from a union official that ratification has occurred. *Swift & Co.* 213 NLRB 49 (1974). Accordingly,

the Union's representation that ratification had occurred is sufficient to establish for contract bar purposes that the agreement was, in fact, ratified.

## **Conclusion**

Based on the above, I find that the December 8, 2009 agreement acts as a bar to the holding of an election and will dismiss the petition.

## **ORDER**

**IT IS ORDERED** that the petition is dismissed.<sup>3</sup>

Dated at Detroit, Michigan, this 4th day of March 2010.

(SEAL)

*/s/ Stephen M. Glasser*

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<sup>3</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14<sup>th</sup> Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **March 18, 2010**. The request may be filed electronically through **E-Gov** on the Board's website, [www.nlrb.gov](http://www.nlrb.gov), but may **not** be filed by facsimile.

To file the request for review electronically, go to [www.nlrb.gov](http://www.nlrb.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the **File Documents** button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the **Accept** button. Then complete the E-Filing form, attach the document containing the request for review, and click the **Submit Form** button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under **E-Gov** on the Board's website, [www.nlrb.gov](http://www.nlrb.gov).